

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GERI L. MAGEE

Claimant

VS.

RECYCLED MATERIALS

Respondent

AND

HARTFORD ACCIDENT & INDEMNITY

Insurance Carrier

[illegible]

Docket No. 265,702

ORDER

Claimant appeals the August 29, 2001 Award of Administrative Law Judge Brad E. Avery. Claimant alleges she suffered accidental injury on or about September 28, 1998 through October 28, 1998. The Administrative Law Judge found claimant failed to prove that her alleged accidental injury arose out of and in the course of her employment with respondent. The Appeals Board (Board) held oral argument on July 23, 2002.

APPEARANCES

Claimant appeared by her attorney, James E. Martin of Overland Park, Kansas. Respondent and its insurance carrier appeared by their attorney, Michael J. Haight of Overland Park, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge. The Board, however, clarifies the record in that

the medical examinations and supplemental reports of Dr. Lowrey [sic] should instead read to be the medical examinations and supplemental reports of Lowry Jones, Jr., M.D.

ISSUES

- (1) Did claimant prove that she met with personal injury by accident on the date or dates alleged?
- (2) Did claimant's alleged accidental injury or injuries arise out of and in the course of her employment with respondent?
- (3) Did claimant provide timely notice of the alleged accident or accidents?
- (4) What is the nature and extent of claimant's injury and/or disability?
- (5) Is claimant entitled to future and unauthorized medical treatment?
- (6) Is claimant entitled to reimbursement for hospital and medical expenses already obtained?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

Claimant initially suffered accidental injury on August 8, 1998, when she fell at work, injuring her right shoulder and arm. That injury, in Docket No. 239,235, was settled on May 17, 2001.

Approximately two weeks after the August 8 accident, claimant began experiencing problems with her left leg. She got out of bed one morning, and her ankle and foot did not work properly. Claimant was experiencing sharp pains in her foot and ankle. This problem lasted approximately a week and then cleared up.

On September 28, 1998, claimant was performing her normal work activities, driving the loader. The activities of driving the loader caused claimant's pain symptoms to increase. The area of the pain is in some dispute, as claimant testified to different pain symptoms in different areas of the body at various times in the record. The initial complaints were limited to her arm and shoulder. But claimant's later testimony at her

deposition and regular hearing described more extensive complaints of pain down into the low back, hip, leg and ankle.

Claimant experienced ankle problems after the September 28 incident when she went home and soaked in a tub. Claimant's initial testimony indicated that the leg and ankle problem did not begin until she was getting out of the bathtub. Claimant's later testimony embellished the pain symptoms as being involved prior to the bath and even when she was running the loader at work. The Board finds it noteworthy that the further away from claimant's date of accident, the more connected her back, hip and leg symptoms became with the incidents at work and the less connection there was to the incidents claimant had earlier described at home.

This concern was echoed by orthopedic surgeon Lowry Jones, Jr., M.D., who examined claimant's medical records at the request of Judge Avery and provided his independent medical evaluation of claimant's condition. Dr. Jones noted a dramatic difference between claimant's examinations and the various medical histories provided as to when claimant's hip, back and leg pain presented itself. As a result of his review of the documentation, Dr. Jones was unable to explain claimant's hip, leg and back symptoms and was further unable to associate those complaints with any injuries resulting at her employment with respondent.

The Administrative Law Judge also found claimant's ever changing testimony to be suspect. He correctly stated in the Award that the burden of proof is on claimant to establish her right to an award of compensation by proving all the various conditions upon which that right depends by a preponderance of the credible evidence. K.S.A. 1998 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

The Board finds, as did the Administrative Law Judge, that claimant has failed to prove that she suffered accidental injury arising out of and in the course of her employment with respondent. The Board, therefore, affirms the Award of the Administrative Law Judge denying claimant benefits for the injuries alleged.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated August 29, 2001, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Attorney for Claimant
Michael J. Haight, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director